

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN LAMAR BARNES, #336-955,	:	CASE NO. C-1-02-101
	:	
Plaintiff,	:	JUDGE SPIEGEL
v.	:	MAGISTRATE JUDGE SHERMAN
	:	
MATTHEW THOMAS, et al.,	:	
	:	
Defendants.	:	

MOTION TO STAY REPLY

Come now Defendants, by and through counsel, and move the Court to stay the time to reply to Plaintiff's opposition to Defendants' Motion for Summary Judgment. The reasons are stated in the attached Memorandum.

Respectfully submitted,

JIM PETRO
Attorney General of Ohio

s/ MARIANNE PRESSMAN
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MEMORANDUM

Plaintiff filed this action *pro se* on January 30, 2002. (Doc. 3). Defendants answered timely. On September 9, 2002, Defendants moved to depose the Plaintiff. Motion was granted and the Plaintiff was deposed on September 19, 2002. Plaintiff then attempted to amend his complaint. (Doc. 23). That motion was denied. (Doc. 40). On May 9, 2002, the Court issued a Calendar Order. (Doc. 9). Discovery deadline was set for December 26, 2002, and the Dispositive Motion filing deadline was set for January 27, 2003. After seeking and being granted a brief extension, Defendants filed their Motion for Summary Judgment on March 3, 2003. (Doc. 39)._ Thereafter, Plaintiff moved to extend his response time by 30 days. (Doc. 45). On April 11, 2003, Plaintiff moved to extend the time an additional 40 days. (Doc. 48). That motion, too, was granted. (Doc. 49). Thus, the response that was due on April 2, 2003, was extended until June 26, 2003. Plaintiff did not meet that deadline. In fact, he neither sought a further extension nor did he file a response. On July 29, 2003, the Magistrate Judge issued a show cause Order, that Plaintiff show in writing within 15 days why this Court should not dismiss the case for lack of prosecution. (Doc. 53). Plaintiff responded timely. (Doc. 54). On August 8, 2003, Defendants objected to Plaintiff's response to the show cause Order. (Doc. 55). There has been no ruling on that objection. Before a ruling, Plaintiff proceeded to file his memorandum in response to Defendants' Motion for Summary Judgment on August 19, 2003.¹ (Doc.52).

It is Defendants' contention that Plaintiff has not been diligent in pursuing his lawsuit. This amount of delay causes prejudice to the Defendants. Since Plaintiff had

¹ Despite the fact that the certificate of service stated that it was sent August 19, 2003, it was not received until August 28, 2003. The envelope has a notation which states "mailed out 8/25/03."

not complied with the rules of the Court nor the Federal Rules of Civil Procedure, Defendants sought an order dismissing the case for want of prosecution. Until that motion has been ruled upon, Defendants seek a stay on filing a reply. In the event the Court grants Plaintiff leave to file his opposition so far out of time Defendants will then reply. However, should the Court grant Defendants' motion, Defendants will not have expended the time and effort to reply needlessly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded to Plaintiff, John Lamar Barnes, #336-955, Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville-Minford Rd., Lucasville, Ohio 45699, by regular U.S. mail on this day of September, 2003.

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